



OFFICE OF THE ATTORNEY GENERAL - STATE OF TEXAS  
JOHN CORNYN

December 4, 2000

Ms. Joan Kennerly  
Senior Assistant City Attorney  
City of Irving  
P.O. Box 152288  
Irving, Texas 75015-2288

OR2000-4588

Dear Ms. Kennerly:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141770.

The City of Irving (the "city") received a written request for the personnel files of three city police officers. You have submitted to this office as a representative sample of the records at issue the personnel records of one of the named officers, and contend that specific portions of the requested records are excepted from required public disclosure under sections 552.101, 552.102, and 552.117 of the Government Code.<sup>1</sup>

We generally agree with your contentions regarding the portions of the requested personnel files that come under the protection of common law privacy as incorporated into section 552.102 of the Government Code. The test for section 552.102(a) protection is the same as that for information protected by common law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *Id.* Therefore, the fact that an employee participates in a group insurance plan funded by a governmental employer and the amount of any payroll deduction therefor is not information that is excepted from disclosure. Open Records Decision No. 600 at 9 (1992). On the other hand, information relating to an employee's choice of insurance carrier and his election of optional coverages is confidential under the right of privacy, *id.* at 10-11. Similarly, this office has determined that information revealing the personal financial decision to voluntarily have certain deductions made from an employee's paycheck meets the *Industrial Foundation* test. Open Records Decision No. 545 (1990).

This office has also held that information relating to one's credit history meets the common law privacy test. Open Records Decision No. 481 (1987). Additionally, an employee's designation of beneficiary is protected by common law privacy. Open Records Decision No. 600 at 10 (1992). Finally, employee W-4 forms are excepted from disclosure by section 6103(a) of title 26 of the United States Code. *Id.* at 8. However, neither a public employee's date of birth nor the employee's character references are protected by common law privacy, Open Records Decision No. 455 at 9 (1987); consequently, these categories of information must be released.

Section 552.117(2) of the Government Code requires the city to withhold all information that relates to the home address, home telephone number, social security number, and family information of a peace officer as defined by article 2.12, Code of Criminal Procedure. Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988). We agree that the city must withhold the types of information pursuant to section 552.117(2).

You also contend that the photograph of a city police officer is excepted from public disclosure. Section 552.119 of the Government Code excepts from public disclosure a photograph of a peace officer which, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. Section 552.119 also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. Open Records Decision No. 502 (1988). Assuming none of the exceptions are applicable in this instance, we conclude that unless the officer consents to the release, the city must withhold all photographs that depict police officers.

Finally, section 552.130(a)(1) of the Government Code requires the city to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state," while section 552.130(a)(2) requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state." Accordingly, the city must withhold all Texas driver's license numbers and all license plate numbers pursuant to section 552.130.

In summary: a) the following must be withheld pursuant to common law privacy: information revealing personal financial information or personal financial decisions, including beneficiary information, federal income tax information, and information pertaining to life and health insurance coverage, and information relating to the officers' credit history; b) all section 552.117(2) information must be withheld; c) all photographs of the police officers must be withheld pursuant to section 552.119 unless one of the section's exceptions apply; and d) the officers' driver's license numbers and license plate numbers must be withheld pursuant to section 552.130.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

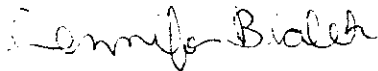
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/RWP/seg

Ref: ID# 141770

Encl. Submitted documents

cc: Ms. Robin Adkins  
P.O. Box 118323  
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(w/o enclosures)